HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.5742 OF 2006

Between:

Capt. J.Rama Rao I.N. (Retd.) …Petitioner

AND

The Union of India,
represented by its Secretary to Government
of India, Ministry of Environment and Forests,
New Delhi and others. ...Respondents

: O R D E R :

Counsel for the Petitioner : Sri K.S. Murthy

Counsel for respondent No.1 : Sri A.D.N.Rao

Counsel for respondent No.2 : Government Pleader for Environment & Forests.

Counsel for respondent No.3 : Sri S.V.Bhatt

Counsel for respondent No.4 : Sri D.Prakash Reddy, Senior Advocate, assisted by Smt.K.Bindu.

Counsel for respondent No.5 : None.

27th December, 2006

Per G.S. Singhvi, C.J.

Captain J. Rama Rao, a retired Naval Officer, who is keenly interested in protecting ecology and environment and also participated in the public hearings held on 19-08-2003 pursuant to the direction given by this Court in Writ Petition No.17017 of 2003, has filed this petition in public interest for grant of a declaration that the action of the official respondents in entertaining the application made by Uranium Corporation of India Ltd. (for short, 'the Corporation') for uranium mining at Lambapur-Peddagattu project in Nalgonda District is unconstitutional. He has further prayed for quashing letter dated 21-12-2005, vide which the Ministry of Environment and Forests, Government of India granted environmental clearance for uranium mining. During the pendency of the writ petition, the petitioner filed WPMP.No.24905 of 2006 for grant of leave to amend paragraphs 23 and 24 of the affidavit so as to enable him to seek quashing of corrigendum dated 13-6-2006. That application was allowed by the Court on 22-9-2006.

The petitioner claims to have assisted the Andhra Pradesh Pollution Control Board (for short, 'the Board') in formulating rules for use of plastic bags, control of noise pollution and bio-medical waste management. He also claims to have been appointed as Commissioner to assist the High Court in the matter of chlorine gas leakage in the outskirts of Hyderabad. He is the Chairman of Forum for Better Hyderabad, which is engaged in propagating the cause of protection of water bodies, public parks and open spaces in and

around Hyderabad. He is also the Chairman of Energy Conservation Mission constituted by Institution of Engineers (India), Andhra Pradesh State Chapter and Member of Local Area Environment Committee constituted by the Supreme Court for monitoring the hazardous waste management. In the affidavit filed by him, the petitioner has referred to Environment Impact Assessment (EIA) Notification dated 27-1-1994 issued by the Government of India under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 (for short, 'the 1986 Act') read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, as amended vide Notifications dated 4-5-1994, 10-4-1997, 13-12-2000, 1-8-2001, 21-11-2001 and 13-6-2002 and averred that in complete violation of the requirements specified in Schedules I and II appended to EIA Notification, the Government of India entertained and sanctioned the application made by the Corporation for uranium mining at Lambapur-Peddapur Project. He has referred to communication No.J-11015/220/2005-1A.11(M), dated 21-12-2005 issued by the Government of India, Ministry of Environment and Forests for grant of environmental clearance to Lambapur-Peddagattu Uranium Mining Project of the Corporation for production of uranium ore and averred that notwithstanding the conditions enumerated in that communication, the decision of the Government of India should be nullified because the same does not reflect consideration of the objections raised by him and large number of environmentalists. In paragraphs 15 to 17 of his affidavit, the petitioner has averred that in compliance of the direction given by the High Court, public hearings were held on 19th August, 2003 at Peddagattu and P.A. Pally Mandal headquarters, but the same was farcical, inasmuch as, the changes allegedly made in the EIA document by the Corporation were not made available to the public

and other interested persons and no officer of the Corporation came forward to explain the issues raised by the objectors. In paragraphs 20 and 21 of his affidavit, the petitioner has averred as under:

> "20. I respectfully submit that the Environmental Clearance granted to the Uranium Mining Project by MoEF letter dated 21st December, 2005 is liable to be set aside because it is "subject to directives of the Hon'ble Supreme Court of India regarding location of polluting industry within 10 km of the lakes" while stating that Nagarjuna Sagar is at a distance of 1.6 km from the mining site. It also violates the Supreme Court judgments where it was declared that right to access safe drinking water is fundamental right to life and Article 21 of Constitution of India. The precautionary principle, which is an accepted touchstone for dealing with potential dangers of polluting activity, covers the present issue. The Hon'ble Supreme Court, in SCC 2001 (2) p.62, while dealing with a plant for production of castor oil derivatives, which was proposed to be set up within 10 km of Himayat Sagar, one of the drinking water sources for Hyderabad found it to be in violation of the right to access safe drinking water. The Supreme Court specifically held that whatever may be precautions and control measures, there is likelihood of breakdown of the safety/control measures and no risk can be taken while dealing with water bodies which supply drinking water. Nagarjuna Sagar is turning to be a main water source of drinking water to many villagers of Nalgonda District (which suffer from deadly fluoresces) as well as twin cities of Hyderabad and Secunderabad apart from being the source for irrigation and drinking waters for Khammam, Krishna, Guntur and Prakasam districts. Thus, the potential polluting activity of uranium mining cannot be permitted in the vicinity of Nagarjuna Sagar. In fact, it will adversely affect the surface and ground water in and around Nagarjuna Sagar due to contaminated storm water runoff and seepage. One heavy cloud burst during the night like the recent monsoon in 2005, will let in the radioactive and toxic material into Nagarjuna Sagar. As Nagarjuna Sagar waters are used for irrigation in

five districts, the radio active and toxic materials are likely to get into food-chain having long term adverse impacts on life cycle and environment.

21. I submit that R-1 has issued environmental clearance to hazardous uranium mining project in close vicinity of Nagarjuna Sagar and to be followed by permissions from R-2 and R-3. I respectfully submit that till this date we have not been informed about the objections raised by us regarding the inadequate and false information given along with application and also fundamental issues. To say that catch drains and silt points will be constructed to control run off from the mines spread over 468 hectares, even without knowing the magnitude of the problem, is nothing but to mislead and it cannot be left to the whims of some officers. As there is urgency which involves the Nagarjuna Sagar Project, constructed at considerable cost and is the life-line for about 20 million people in the State, we seek intervention of the Hon'ble Court to save it and lakhs of people. The roads are being laid and money is being spent and hence there is urgency."

In the counter affidavit filed by Sri N.M.Behl, Deputy General Manager (Civil) of the Corporation, an objection has been taken to the maintainability of the writ petition on the ground that an effective alternative remedy is available to the petitioner under Section 11 of the National Environment Appellate Authority Act, 1997 (for short, 'the 1997 Act'). The deponent has then pleaded that the writ petition is liable to be dismissed because similar petition filed by 'SAMATA', a non-profit voluntary organization for restraining the Government of India from granting environmental clearance to the project of the Corporation, which was registered as Writ Petition No.19852 of 2003, was dismissed by the Court on 10-9-2003. Sri Behl has referred to order dated 15-4-2004 passed by the Supreme Court in Writ Petition (Civil) No.188 of 1999 - **B.L.Wadhera v. Union of India** to show that

challenge to the grant of environmental clearance to the Corporation for uranium mining at Jaduguda in East Singhbhum District of Jharkhand State, on the ground that the radiation caused due to such mining will have adverse impact on the local population and environment, was negatived by the Supreme Court. In paragraphs 11 to 21 and 25 of his affidavit, Sri N.M.Behl has highlighted the requirement of uranium for producing atomic energy, which, in turn, is used for various purposes including production of electricity. He has also averred that the Corporation ensures strict compliance with the safety norms and the basic objective of waste management for protection of human health and environment. On merits, Sri Behl has denied the petitioner's assertion that the Corporation had concealed the facts or made any mis-statement for the purpose of obtaining environmental clearance. He has also denied the allegation that the representatives of the Corporation did not disclose the details of the project at the public hearing held on 19-8-2003. According to Sri Behl, Sri Prasad, a consultant working with the Corporation explained the project in Hindi, and Telugu translation was provided by Sri Madhusudan Rao, Chief Superintendent (Mechanical). This was supplemented by Sri S.K. Malhotra, Head of Public Awareness Department, Department of Atomic Energy, and the issue relating to violation of the guidelines framed by the Government of India, which was raised by Prof.Purushotham Reddy, was clarified by Sri K.Srinivasa Reddy, Environmental Engineer of the Board.

In the affidavit filed on behalf of the Government of Andhra Pradesh, Smt. Janaki R.Kondapi, Principal Secretary to Government, Environment, Forests, Science and Technology Department, has averred that public hearings were held in compliance of order dated 14-8-2003 passed by the High Court in Writ Petition No.17017 of

2003. Thereafter, Technical Committee of the Board reviewed the project and recommended for environmental clearance duly stipulating certain specific conditions. However, Consent For Establishment Clearance Committee in its meeting held on 28-1-2004, decided to refer the matter for suitable guidelines/directions. After considering the recommendations of the committee, the Government advised the Board to constitute Technical Advisory Committee comprising experts to re-examine the matter. On receipt of further recommendations, the matter was forwarded to the Government of India, and the Ministry of Environment and Forests issued environmental clearance with the specific condition, which is subject to the Supreme Court's directive against location of polluting industries within 10 km radius of the lakes.

In the counter affidavit filed on behalf of the Union of India, Sri Satish Garkoti, Additional Director, Impact Assessment Division, Ministry of Environment and Forests, has averred that on a representation received from the Corporation, the Ministry has issued corrigendum dated 13-6-2006 and replaced specific condition No.1 enumerated in letter dated 21-12-2005.

The petitioner has filed rejoinder affidavits to all the written statements and reiterated his grievance against the environmental clearance granted by the Ministry of Forests and Environment to the Corporation enabling the latter to undertake mining of uranium ore. He has also pleaded that the remedy of appeal provided under Section 11 of the 1997 Act is illusory because the Tribunal is not functioning since 2003 and from September, 2003 only one Member is available.

Sri A.D.N. Rao, learned counsel for respondent No.1, who was joined by Sri D. Prakash Reddy, Senior Counsel appearing for respondent No.4 argued that the remedy of appeal available to the petitioner under Section 11 of the 1997 Act is an effective alternative

remedy and, therefore, the High Court should decline to entertain the petitioner's challenge to the environmental clearance granted by the Government of India for the project in question. Learned counsel emphasized that the High Court does not have adequate expertise to deal with technical matters like the present one and, therefore, the matter should be left to be decided by an expert body constituted under the 1997 Act. Sri A.D.N. Rao produced Notification dated 26-5-2006 issued by the Government of India, whereby Dr. I.V.Manivannan and Sri Kaushlendra Prasad were appointed as Members of the Appellate Authority for a period of three years, and argued that statutory remedy of appeal available to the petitioner under Section 11 cannot be treated as illusory merely because for some time the Tribunal was not functional. Both the learned counsel laid considerable emphasis on the fact that the environmental clearance granted by the Ministry of Environment and Forests, Government of India can become effective only on fulfillment of the conditions specified in letters dated 21-12-2005 and 13-6-2006 and argued that the apprehension expressed by the petitioner regarding threat to the environment should be declared as unfounded.

Sri K.S. Murthy, learned counsel for the petitioner, heavily relied on order dated 29-7-2005 passed by the Tribunal in Appeal No.4 of 2005 and argued that in view of the adjudication already made by the Tribunal on the tenability of appeal filed in similar matter, the petitioner should not be compelled to take recourse to the remedy of appeal under Section 11 of the 1997 Act. He further argued that even otherwise, the High Court should not relegate the petitioner to the alternative remedy of appeal because the issues raised in the writ petition concern the lives of hundreds and thousands of people and important water bodies, which are likely to be polluted by radiation. In

support of his argument, Sri Murthy relied on the judgments of the Supreme Court in **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**[1] and **Durga Enterprises (P) Ltd. v. Principal Secretary, Govt. of U.P.**[2] He then referred to the judgment of the Supreme Court in **A.P. Pollution Control Board II v. Prof. M.V.Nayudu**[3] and argued that the environmental clearance given to the Corporation should be declared as nullity because the same is violative of the conditions laid down by the Supreme Court against the establishment of industry within 10 km. of the lakes.

In his rejoinder, Sri A.D.N. Rao referred to the affidavits of the petitioner and submitted that he clearly falls within the ambit of the expression “any person aggrieved” because he has not only objected to the grant of environmental clearance for the project of the Corporation, but also participated in public hearing held on 19-8-2003 pursuant to the direction given by the High Court in Writ Petition No.17017 of 2003. He further submitted that if this Court comes to the conclusion that the remedy of appeal is an effective alternative remedy and the petitioner is relegated to the said remedy, then the Tribunal may be directed to decide the appeal of the petitioner on merits.

We have given serious thought to the respective arguments. The 1997 Act was enacted by the Parliament to provide for establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the 1986 Act and for matters connected therewith or incidental thereto. Sections 3 of this Act provides for establishment of National Environment Appellate Authority. Section 5 specifies the

qualifications for appointment as Chairperson, Vice-Chairperson or Member. The Chairperson of the Appellate Authority must be a person, who has been a Judge of the Supreme Court or the Chief Justice of a High Court. In terms of sub-section (2) of Section 5, a person is not be qualified for appointment as a Vice-Chairperson unless he has for, at least, two years held the post of a Secretary to the Government of India or any other post under the Central Government or State Government carrying a scale of pay, which is not less than that of a Secretary of the Government of India, and has expertise or experience in administrative, legal, managerial or technical aspects of the problems relating to environment. Sub-section (3) declares that a person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development. It is, thus, evident that National Environment Appellate Authority comprises of persons who have expertise in the field of law, administration, management, environment, conservation, planning and development. Section 11 of the 1997 Act, which provides for remedy of appeal reads as under:

> "**11. Appeals to Authority:-**
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> (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:
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> Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For the purposes of sub-section (1), "person" means-

(a) any person who is likely to be affected by the grant of environmental clearance:

(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;

(d) the Central Government, where the environmental clearance is granted .by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or

(e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.

(3) On receipt of an appeal preferred under sub-section (1), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.

(4) The Authority shall dispose of the appeal within ninety days from the date of filing the appeal:

Provided that the Authority may, for reasons to be recorded in writing, dispose of the appeal within a further period of thirty days."

A reading of the above reproduced section makes it clear that any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes, or class of industries, operations and processes are not to be carried out subject to certain safeguards, can prefer an appeal within thirty days from the date of order. In terms of proviso to Section 11(1), the Appellate Authority can entertain any appeal after expiry of the period of limitation, but not beyond the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

Since the 1997 Act is a special statute, the remedy of appeal available to an aggrieved person has to be treated as an effective alternative remedy. The question raised in this writ petition is highly technical, which cannot be decided by the High Court due to lack of expertise in the field of science and technology etc. This appears to be the reason why a coordinate Bench of this Court had, while dismissing Writ Petition No.19852 of 2003 filed by 'SAMATA' (a voluntary organization) for issue of a direction to respondent Nos.1 and 3 to reject the application of the Corporation as premature, observed that even against the order passed for grant of clearance, the remedy of appeal is available to the affected persons.

In view of the above, we hold that an effective alternative remedy is available to the petitioner for questioning the environmental clearance granted by the Government of India.

The judgments of the Supreme Court on which reliance has been placed by the learned counsel for the petitioner are clearly distinguishable. In **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar** (supra), the Supreme Court took note of the fact that the appellant had filed suits and then filed writ petition under Article 226 of the Constitution of India, but had withdrawn the same much before hearing of the writ petition and held that the High Court was not justified in dismissing the writ petition. In the second case, the Supreme Court held that if the writ petition had been admitted and remained pending for 13 years, the petitioner should not be non-suited on the ground of existence of alternative remedy. In the case before us, the objection to the maintainability of the writ petition has been taken at the threshold of the proceedings. Therefore, it is not possible to ignore the objection and entertain the writ petition ignoring the factum of availability of alternative remedy to the petitioner.

The argument of Sri K.S.Murthy that in view of order dated 29-7-2005 passed by the Tribunal in Appeal No.4 of 2005, the appeal filed by the petitioner would be dismissed, is based on a misconceived assumption that the appellant does not fall within the ambit of the term 'any person aggrieved'. The statement made by Sri A.D.N. Rao, learned counsel for respondent No.1 should be sufficient to allay this apprehension of the petitioner. Even otherwise, we are prima facie convinced that the expression "any person aggrieved" appearing in Section 11 is of wide import. It takes within its fold a person like the petitioner who has shown keen interest in protecting environment and has throughout been opposing the grant of environmental clearance to the Corporation for uranium mining and has also participated in the public hearing held in compliance of the direction given by the High Court would fall within the ambit of the said expression.

In view of the above discussion, we hold that the remedy of appeal available to the petitioner under Section 11 of the 1997 Act is an effective alternative remedy and there is no extraordinary reason for making a departure from the settled rule that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner.

In the result, the writ petition is dismissed with liberty to the petitioner to prefer an appeal under Section 11 of the 1997 Act. If such an appeal is filed within fifteen days from today, then the same shall be entertained by the Tribunal and decided on merits. Respondent Nos.1 and 4 shall not be entitled to raise objection of limitation or any other technical objection to the maintainability of the appeal.

G.S. SINGHVI, C.J.

27th December, 2006.

C.V. NAGARJUNA REDDY, J.

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[1] (2004) 7 SCC 166

[2] (2004) 13 SCC 665

[3] (2001) 2 SCC 62